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Filing date: **06/05/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91161373
Party	Plaintiff American Italian Pasta Company American Italian Pasta Company ,
Correspondence Address	THOMAS H. VAN HOOZER HOVEY WILLIAMS LLP 2405 GRAND BLVD. SUITE 400 KANSAS, MO 64108 UNITED STATES clb@hovewilliams.com
Submission	Motion to Extend
Filer's Name	Thomas H. Van Hoozer
Filer's e-mail	tvh@hovewilliams.com, clb@hovewilliams.com, krb@hovewilliams.com
Signature	/Thomas H. Van Hoozer/
Date	06/05/2007
Attachments	Opposer's Motion for Extension of Time to File Reply Brief.pdf (4 pages) (103524 bytes) Exhibits to Opposer's Motion for Extension of Time to File Reply Brief.pdf (10 pages) (190023 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AMERICAN ITALIAN PASTA COMPANY,)	
)	
Opposer,)	
)	
)	Opposition No. 91161373
)	
BARILLA ALIMENTARE S.p.A.)	
)	
)	
Applicant.)	

**OPPOSER’S MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF
AND REQUEST FOR EXPEDITED RULING
AND COMBINED MEMORANDUM IN SUPPORT THEREOF**

Pursuant to TBMP 509.01(a), Opposer requests a five-day extension of time in which to file its Reply Brief to Defendant’s Trial Brief. Opposer’s 46-page Trial Brief arrived in the mail **one week** after it was filed with the TTAB. Thus, based on this good cause, Opposer requests additional time to respond.

I. Opposer’s Request is Timely

Opposer’s Reply Brief is currently due on June 11, 2007 and, as such, this request is timely filed. The standard for allowing an extension of a prescribed period prior to the expiration of that period is good cause. See Fed. R. Civ. P. 6(b)(1); *Am. Vitamin Pdcts., Inc. v. DowBrands, Inc.*, 22 USPQ2d 1316 (TTAB 1992); and TBMP §509.

II. Good Cause Exists to Grant the Extension

“The Board generally is liberal in granting extensions of time before the period to act has elapsed so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused.” *Sysco Corp. v. Princess Paper, Inc.*, 2006 WL 752426 *2 (T.T.A.B.

March 22, 2006). *See also Sunkist Growers, Inc. v. Benjamin Ansehl Co.*, 229 USPQ 147 (TTAB 1985).

A. Applicant's Trial Brief Arrived Late

Here, Applicant's Trial Brief was due Tuesday, May 29, 2007. Opposer's Reply Brief is due 15 days from that date, or June 11, 2007. However, Applicant's lengthy brief arrived at Opposer's counsel's office **seven days** after the Applicant's brief was due, effectively cutting Opposer's response time in half. While the reason for the delayed service is not certain, Applicant's mail service has been dilatory in the past. On past occasions, Applicant's counsel received Opposer's mailed documents on a delinquent basis, explaining that Applicant had problems with its mail service. (See Exhibit A, Correspondence between Applicant's counsel and Opposer's counsel). Regardless, and as a courtesy, Opposer's counsel has emailed Applicant's counsel copies of the documents -- including Opposer's Trial Brief. (Exhibit B, correspondence between Applicant's counsel and Opposer's counsel).

In this instance, Applicant's counsel did not email Opposer's counsel with the Trial Brief. Additionally, the Trial Brief was not available for viewing on the TTAB's website until three days after it was due. Thus, Opposer's counsel lost precious time to prepare its Reply Brief.

B. Opposer's Request is Reasonable

An extension of five days is reasonable as the TBMP anticipates five additional days for delivery by First Class Mail is appropriate. TBMP §113. Second, five days is reasonable in light of the fact Applicant's Trial Brief arrived a week later than the due date. Notably, TBMP §113.04 provides that a party filing a document in a Board inter partes proceeding may always, as a courtesy, send a copy to an adverse party by telephonic facsimile transmission. That did not happen here. An

additional five days, therefore, is fair. *The Pep Boys Manny, Moe & Jack of California v. Cherng Lian Ent Co., Ltd.*, 2003 WL 1932949 n.2 (T.T.A.B. April 16, 2003) (finding a seven day extension of time to respond to a summary judgment motion reasonable); *Silicon Genetics v. Genetworks, Inc.*, 2003 WL 880553 *2 (T.T.A.B. March 4, 2003) (granting a 30-day extension of time to respond to a summary judgment motion). Third, the length of Applicant's trial brief, 45 pages, such that the full reply period, not half, is appropriate.

Opposer's extension request, therefore, is not necessitated by Opposer's lack of diligence or unreasonable delay in taking any action during the 15-day period. In fact, on the day that Opposer's counsel received the Trial Brief, it immediately sought Applicant's consent in requesting an additional five days in which to file its Reply Brief. Nonetheless, Applicant has declined to consent to this Motion (Exhibit C), even though Applicant will not be prejudiced by the extension, since it is not entitled to a Reply Brief. *See* TBMP § 801.02(d).

III. An Expedited Ruling is Respectfully Requested

Due to the short time frame involved, Opposer makes the special request for an expedited ruling on this Motion. Opposer further requests a telephone conference with the interlocutory attorney, Linda M. Skoro, and counsel for both parties on or before June 6, 2007.

Respectfully Submitted,

/s/ Thomas H. Van Hoozer
Thomas H. Van Hoozer, Reg. No. 32761
Cheryl L. Burbach
HOVEY WILLIAMS LLP
2405 Grand Blvd., Suite 400
Kansas City, MO 64108
Phone: 816/474-9050
Fax: 816/474-9057

ATTORNEYS FOR OPPOSER

CERTIFICATE OF FILING

The undersigned hereby certifies that **OPPOSER'S FOR EXTENSION OF TIME TO FILE REPLY BRIEF AND REQUEST FOR EXPEDITED RULING** was filed electronically with the Trademark Trial and Appeal Board on this 5th day of June, 2007.

/s/ Thomas H. Van Hoozer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by regular mail, postage prepaid, and electronic mail this 5th day of June, 2007, on the following:

G. Franklin Rothwell
Brian E. Banner
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005
Fax: (202) 783-6031
bbanner@rothwellfigg.com

/s/ Thomas H. Van Hoozer

Exhibit A

Cheryl Burbach

From: Cheryl Burbach
Sent: Monday, May 07, 2007 2:49 PM
To: 'Brian Banner'
Cc: Litigation; Tom Van Hoozer
Subject: RE: American Italian Pasta Company v. Barilla

Brian,

Glad it finally came. In our mailed package, we sent you a redacted version of the brief, so that you could send it to your client. I believe our cover letter explains that, but let me know if you have further questions.

Cheryl Burbach

Hovey Williams LLP
2405 Grand Boulevard, Suite 400
Kansas City, MO 64108

T 816.474.9050 | F 816.474.9057
<http://www.hoveywilliams.com>

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From: Brian Banner [mailto:bbanner@rothwellfigg.com]
Sent: Monday, May 07, 2007 2:29 PM
To: Cheryl Burbach
Subject: RE: American Italian Pasta Company v. Barilla

Hi Cheryl,

Never guess what came in the Friday afternoon mail, ... the brief. Quick question, what pages contain the "Confidential - Trade Secret/Commercially Sensitive" stuff? I want to courier the brief to my client without those pages. Thanks.

Brian E. Banner
Rothwell, Figg, Ernst & Manbeck P.C.
1425 K Street N.W.; Suite 800
Washington, DC 20005
Phone: (202)626-3551 Fax: (202)783-6031
Email: bbanner@rothwellfigg.com

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-----Original Message-----

From: Cheryl Burbach [mailto:clb@hoveywilliams.com]
Sent: Friday, May 04, 2007 11:41 AM
To: Brian Banner; Patrick R. Collares
Cc: Tom Van Hoozer; Litigation

6/5/2007

Subject: American Italian Pasta Company v. Barilla

Brian,

I hope you had a good time at INTA this year. I saw your name on the attendee list, but didn't run into you at any sessions or events. I thought it was a great event and that the quality of the sessions was terrific.

I received Patrick's voice mail message today that you had not received our trial brief in the mail yet. Attached is a courtesy copy of that brief. Please be advised that the brief contains information that has been designated confidential or confidential "attorney's eyes only," which is why it was filed under seal. Please let me know if you have any questions.

Cheryl Burbach

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6/5/2007

Cheryl Burbach

From: Brian Banner [bbanner@rothwellfigg.com]
Sent: Monday, December 11, 2006 4:24 PM
To: Tom Van Hoozer
Cc: Cheryl Burbach; Patrick R. Collares; GFR FLORIDA; Kimberly M. Kelly
Subject: AIPC Opposition 91161373 / Our ref.: 2778.157

December 11, 2006
To: Tom Van Hoozer, Esq.
cc: Cheryl Burbach, Esq.

Re: Opposition 91161373 filed by AIPC against Serial No. 78/136703 for the trademark "Barilla -- America's Favorite Pasta"
Our ref.: 2778.157

Dear Mr. Van Hoozer,

Thank you for returning my telephone call this afternoon to confirm that you are willing to stipulate to the admission of Schedule 2.1 (a) into evidence in the above Opposition and referenced in Opposer's Exhibit 100.

I received the couriered copy of the unsigned Timothy Scott Webster deposition without the Opposer's Exhibits today. I request that you send me the Exhibits that should go with this deposition beginning with Exhibit 98 at your early convenience. Please do not mail the Exhibits as it will take ten business days before they are received in Washington. Alternatively, please courier the Exhibits and possible the corrected and signed deposition to me. Thanks you for your cooperation.

Finally, I understand that you continue to attempt to contact the general counsel of AIPC Mr. Schueller in order to identify someone within AIPC to whom Mr. Sergio Periera, the Vice President of Barilla USA may speak about the possibility of a settlement in this matter. Please use your best efforts in this direction as it would be financially advantageous for both clients to have the opportunity at least to come to a settlement in the near term. Mr. Periera is 7 hours ahead of me while he is traveling in Europe this week. I do have his cell phone and can reach him once you can identify the AIPC official you has authority to speak with him about settlement.

Brian E. Banner

6/5/2007

Exhibit B

Cheryl Burbach

From: Cheryl Burbach
Sent: Friday, May 04, 2007 10:41 AM
To: 'Brian Banner'; 'Patrick R. Collares'
Cc: Tom Van Hoozer; Litigation
Subject: American Italian Pasta Company v. Barilla
Attachments: Trial Brief.FINAL.pdf

Brian,

I hope you had a good time at INTA this year. I saw your name on the attendee list, but didn't run into you at any sessions or events. I thought it was a great event and that the quality of the sessions was terrific.

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Cheryl Burbach

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Exhibit C

Cheryl Burbach

From: Brian Banner [bbanner@rothwellfigg.com]
Sent: Monday, June 04, 2007 6:03 PM
To: Cheryl Burbach
Cc: Tom Van Hoozer; Litigation
Subject: RE: AIPC v. Barilla
Attachments: ttabvue-91161373-OPP-89.pdf

Cheryl,

Sorry but we are unable to agree to their request. See you at the hearing.

Brian E. Banner
Rothwell, Figg, Ernst & Manbeck P.C.
1425 K Street N.W.; Suite 800
Washington, DC 20005
Phone: (202)626-3551 Fax: (202)783-6031
Email: bbanner@rothwellfigg.com

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From: Cheryl Burbach [mailto:clb@hoveywilliams.com]
Sent: Monday, June 04, 2007 5:00 PM
To: Brian Banner
Cc: Tom Van Hoozer; Litigation
Subject: AIPC v. Barilla

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Would you consent to a 5 day extension of time for us to file our reply brief?

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